

(2021) 07 GAU CK 0126

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3324 Of 2021

Nishamoni Kalita

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Citation : (2021) 07 GAU CK 0126

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A D Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. A D Choudhury, learned counsel for the petitioner. Also heard Mr. S M T Chistie, learned counsel for the respondents no. 1 and 2 being

the authorities under the Secondary Education Department, Government of Assam.

2. It is stated that the respondent no. 3 is not in existence as of present.

3. Considering the nature of the order proposed to be passed, we deem it appropriate, notices need not to be issued to the respondents no. 4 and 5 for the present.

4. The petitioner is a subject teacher in Education in the Barpeta Government HS School having been appointed on 18.02.2006. On 08.06.2012, the

petitioner met with an accident while she was traveling from Guwahati to Barpeta. Although she has recovered from the injuries she suffered from

the accident, but certain medical complications still persist and she is required to have expert medical treatment for the purpose.

5. It is stated that the son of the petitioner is also have some neurological

problem and suddenly becomes unconscious and the disease from which he is suffering is called neurocardiogenic syncope which is medically termed as vasovagal syncope. For both the reasons, it would be more convenient for the petitioner if she is transferred and posted in any school in Guwahati, so that she can have better medical attention to her own problems as well as that of her son. In the circumstance, the petitioner submitted an application dated 25.11.2020 to the Chairman of State Level Committee for transferring of secondary teachers, seeking for a transfer from Barpeta to any secondary school in Guwahati. The said application of the petitioner was forwarded by the Inspector of Schools vide a communication dated 01.12.2020 to the Director of Secondary Education Assam. The present writ petition is instituted on the grievance that inspite of such application for transfer having been submitted by the petitioner, the same has not been given its consideration, more so when the petitioner has sought for transfer on some medical grounds of herself and that of her son.

6. Mr. S M T Chistie, learned counsel for the Secondary Education Department of Government of Assam states that although the Assam Elementary and Secondary School Teachersâ?? (Regulation of Posting and Transfer) Act, 2020 has been enacted but there is a requirement under the Act to constitute a State Level Committee and the said committee is yet to be constituted. The learned counsel also states that in order of streamline the process of transfer, the respondent authorities intend to create an online portal where the applications for transfer may be made. As the said process is yet to be completed, therefore, the application of the petitioner for transfer is kept pending by the authorities.

7. The stand taken by the respondent authorities does not appear to us to be arbitrary if the authorities intend to provide for a proper procedure for processing such applications for transfer. But at the same time, we also take note of that the present petitioner is seeking a transfer on some medical grounds. We are not expressing any view on the acceptability of such medical grounds being raised but at the same time, we are of the view that if a transfer is being sought on some medical ground, the same at least requires a consideration from the authorities on its authenticity and acceptability. It being so, we are of the view that the claim of the petitioner can be distinguished from any other such applications that may be pending and as a

medical ground has been taken, the authorities need not wait till the actual process of putting the online portal system is in place.

8. It is stated that presently the Principal Secretary to the Government of Assam in the Education Department is in charge of the department.

9. In the circumstance, we direct the Principal Secretary to the Government of Assam in the Education Department to give a consideration to the

application of the petitioner for transfer dated 25.11.2020 and pass a reasoned order on the same. In doing so, the Principal Secretary may examine

the urgent requirement of the petitioner for being transferred on the medical ground being taken. By requiring the Principal Secretary to the

Government of Assam in the Education Department to give a consideration to the application of the petitioner for transfer, we clarify that it is not a

direction from the court to allow such application but on the other hand it is a direction to the Principal Secretary to make its own independent

application of mind and pass a reasoned order based on the facts and circumstance of the case.

10. We make it clear that this order is not to be a precedent for all such other applications for transfer that may be pending and the present order is

passed on the facts and circumstance of the present case. The requirement of passing the necessary order be done within a period of one month by

the Principal Secretary from the date of receipt of certified copy of the order.

11. Writ petition stands disposed of in the above terms.